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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

Phoebe Holston

Plaintiff,

v.

Stellar Recovery, Inc.

Defendant.

Case No.: 2:15-cv-06566

Judge:

**COMPLAINT FOR DAMAGES  
UNDER THE FAIR DEBT  
COLLECTION PRACTICES ACT,  
THE TELEPHONE CONSUMER  
PROTECTION ACT AND OTHER  
EQUITABLE RELIEF**

**JURY DEMAND ENDORSED  
HEREIN**

**PARTIES**

1. Plaintiff, Phoebe Holston (“Phoebe”), is a natural person who resided in Los Angeles, California, at all times relevant to this action.

- 1 2. Defendant, Stellar Recovery, Inc. (“Stellar”), is a Florida Corporation that  
2 maintained its principal place of business in Jacksonville, Florida at all times  
3 relevant to this action.  
4

5 **JURISDICTION AND VENUE**  
6

- 7 3. Pursuant to 28 U.S.C. §1331, this Court has federal question jurisdiction over  
8 this matter as it arises under the Fair Debt Collection Practices Act  
9 (“FDCPA”), 15 U.S.C. § 1692 et seq. and the Telephone Consumer Protection  
10 Act (“TCPA”), 47 U.S.C. § 227.  
11  
12 4. Pursuant to 28 U.S.C. § 1391(b), venue is proper because a substantial part of  
13 the events giving rise to this claim occurred in this judicial district.  
14

15 **STATEMENT OF FACTS**  
16

- 17 5. Before Stellar began contacting Phoebe, it and Phoebe had no prior business  
18 relationship and Phoebe had never provided express consent to Stellar to be  
19 contacted on her cellular telephone.  
20  
21 6. Stellar regularly uses instrumentalities of interstate commerce and the mails to  
22 collect consumer debts owed or due or asserted to be owed or due another.  
23  
24 7. The principal source of Stellar’s revenue is debt collection.  
25  
26 8. Stellar is a “debt collector” as defined by 15 U.S.C. § 1692a(6).  
27  
28 9. As described, *infra*, Stellar contacted Phoebe to collect a debt that was  
incurred primarily for personal, family, or household purposes.

1 10. This alleged obligation is a “debt” as defined by 15 U.S.C. § 1692a(5).

2 11. Phoebe is a “consumer” as defined by 15 U.S.C. § 1692a(3).

3  
4 12. Within the past twelve months, and before, Stellar has been calling Phoebe on  
5 her cellular phone in connection with the collection of a debt.

6  
7 13. Shortly after the calls began, Phoebe communicated her desire that Stellar  
8 cease calling her.

9  
10 14. Despite this communication, Stellar continued to call Phoebe on her cellular  
11 phone, on an almost daily basis.

12 15. Stellar caused Phoebe emotional distress.

13  
14 **COUNT ONE**

15 **Violation of the Fair Debt Collection Practices Act**

16 16. Plaintiff re-alleges and incorporates by reference Paragraphs 12 through 15  
17 above as if fully set forth herein.

18  
19 17. Defendant violated 15 U.S.C. § 1692d by engaging in conduct the natural  
20 consequence of which is to harass, oppress, or abuse Plaintiff in connection  
21 with the collection of the debt.

22  
23 **COUNT TWO**

24  
25 **Violation of the Fair Debt Collection Practices Act**

26 18. Plaintiff re-alleges and incorporates by reference Paragraphs 12 through 15  
27 above as if fully set forth herein.

1 19. Defendant violated 15 U.S.C. § 1692f by using unfair or unconscionable  
2 means to collect the debt.  
3

4 **COUNT THREE**

5 **Negligent Violation of the Telephone Consumer Protection Act**

6  
7 20. Plaintiff re-alleges and incorporates by reference Paragraphs 12 through 15  
8 above as if fully set forth herein.

9 21. Senator Fritz Hollings, the original sponsor of the TCPA, stated:  
10

11 Computerized calls are the scourge of modern civilization. They wake us up  
12 in the morning; they interrupt our dinner at night; they force the sick and  
13 elderly out of bed; they hound us until we want to rip the telephone right out  
14 of the wall.

15 137 Cong. Rec. 30,821 (1991).

16 22. The TCPA provides, in part:

17 (b) RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE  
18 EQUIPMENT.—

19 (1) PROHIBITIONS.—It shall be unlawful for any person within the  
20 United States, or any person outside the United States if the recipient  
21 is within the United States—

22 (A) to make any call (other than a call made for emergency  
23 purposes or made with the prior express consent of the called  
24 party) using any automatic telephone dialing system or an  
25 artificial or prerecorded voice—

26 \* \* \*

27 (iii) to any telephone number assigned to a paging  
28 service, cellular telephone service, specialized mobile  
radio service, or other radio common carrier service, or

any service for which the called party is charged for the call...

47 U.S.C. §§ 227(b)(1)(A)(iii).

23. Defendant used a predictive dialer system to call Plaintiff on her cellular phone.

24. “[A] predictive dialer is equipment that dials numbers and, when certain computer software is attached, also assists telemarketers in predicting when a sales agent will be available to take calls. The hardware, when paired with certain software, has the capacity to store or produce numbers and dial those numbers at random, in sequential order, or from a database of numbers.” *In the Matter of Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 F.C.C. Rcd. 14014, 14091-4093 (2003); *see also In the Matter of Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 F.C.C. Rcd. 559, 562-63 (2008).

25. A predictive dialer system is an automated telephone dialing system (“ATDS”) within the meaning of the TCPA. *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, adopted June 18, 2015, p. 13, ¶ 13; *see also In the Matter of Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 F.C.C. Rcd. 14014, 14091-4093 (2003); *In the*

*Matter of Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 F.C.C. Rcd. 559, 562-63 (2008).

26. The term “called party,” as used in Section 227(b)(1)(A) of the TCPA, refers to the person or entity subscribing to the called number at the time the telephone call is made. *See Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 643 (7th Cir. 2012); *Zyboro v. NCSPlus, Inc.*, 44 F. Supp. 3d 500, 504 (S.D.N.Y. 2014); *Osorio v. State Farm Bank, F.S.B.*, 746 F.3d 1242, 1251-52 (11th Cir. 2014); *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, adopted June 18, 2015, pp 40-41, ¶ 73.

27. Plaintiff was the “called party” in each telephone call Defendant placed to a Plaintiff’s cellular telephone.

28. Defendant negligently violated 47 U.S.C. § 227(b)(1)(A) on multiple and separate occasions by each time using an ATDS and/or an artificial or prerecorded voice to call Plaintiff on her cellular telephone without Plaintiff’s prior express consent or after such consent had been revoked.

#### **COUNT FOUR**

#### **Willful and Knowing Violation of the Telephone Consumer Protection Act**

29. Plaintiff re-alleges and incorporates by reference Paragraphs 12 through 15 and Paragraphs 21 through 27 above as if fully set forth herein.

1 30. The TCPA provides, in part:

2 If the court finds that the defendant willfully or knowingly violated this  
3 subsection or the regulations prescribed under this subsection, the court may,  
4 in its discretion, increase the amount of the award to an amount equal to not  
5 more than 3 times the amount available under subparagraph (B) of this  
6 paragraph.

7 47 U.S.C. § 227(b)(3).

8 31. The Communications Act of 1943, of which the TCPA is a part, defines

9 “willful” as “the conscious or deliberate commission or omission of such act,  
10 irrespective of any intent to violate any provision[], rule or regulation....” 47  
11 U.S.C. § 312(f).

12 32. In order to establish a “willful” or “knowing” violation of the TCPA, a

13 plaintiff need not demonstrate that the defendant intended to violate the  
14 statute, or that it knew or should have known it was violating the statute. *See*  
15 *Roylance v. ALG Real Est. Servs., Inc.* 2015 U.S. Dist. LEXIS 44930, \*31  
16 (N.D. Cal. Mar. 16, 2015) *Bridgeview Health Care Ctr. Ltd. v. Clark*, 2013  
17 U.S. Dist. LEXIS 37310, \*21-22 (N.D. Ill. Mar. 19, 2013); *Steward v. Regent*  
18 *Asset Mgmt. Solutions, Inc.*, 2011 U.S. Dist. LEXIS 50046, \*18-20 (N.D. Ga.  
19 2011).

20 33. Instead, a plaintiff need only show that the defendant engaged in a “voluntary  
21 act” that violated the TCPA. *See Bridgeview*, 2013 U.S. Dist. LEXIS, at \*21-  
22 22; *see also Roylance*, 2015 U.S. Dist. LEXIS, at \*31 (intentionally making  
23  
24  
25  
26  
27  
28

1 phone calls that violated TCPA, without intent to violate the statute, was  
2 sufficient to warrant treble damages).

3  
4 34. Defendant voluntarily placed telephone calls to Plaintiff's cellular telephone  
5 number using an ATDS and/or an artificial or prerecorded voice.

6  
7 35. Defendant willfully and knowingly violated 47 U.S.C. § 227(b)(1)(A) on  
8 multiple and separate occasions by each time using an ATDS and/or an  
9 artificial or prerecorded voice to call Plaintiff on her cellular telephone without  
10 Plaintiff's prior express consent or after such consent had been revoked.  
11

12 **JURY DEMAND**

13  
14 36. Plaintiff demands a trial by jury.

15 **PRAAYER FOR RELIEF**

16 37. Plaintiff prays for the following relief:

17  
18 a. Judgment against Defendant for actual damages, statutory damages,  
19 and costs and reasonable attorney's fees pursuant to 15 U.S.C. §  
20 1692k.

21  
22 b. An order enjoining Defendant from placing further telephone calls to  
23 Plaintiff's cellular telephone number pursuant to 47 U.S.C. §  
24 227(b)(3).

25  
26 c. Judgment against Defendant for statutory damages pursuant to 47  
27 U.S.C.  
28

